

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion to Determine the  
Extent to Which the Public Utility Telephone  
Service Known as Voice Over Internet Protocol  
Should Be Exempted from Regulatory  
Requirements.

Investigation 04-02-007  
(February 11, 2004)

**JOINT COMMISSIONERS' RULING GRANTING THE  
GREENLINING INSTITUTE'S NOTICE OF INTENT TO CLAIM  
COMPENSATION AND DENYING ITS MOTION FOR A PREAPPROVED  
FINDING OF SUBSTANTIAL CONTRIBUTION**

As required by Pub. Util. Code § 1804(b)(1), this ruling finds that the Greenlining Institute (Greenlining) is a customer eligible for an award of compensation, has met the significant financial hardship test, and is eligible for compensation in this proceeding. This ruling denies Greenlining's Expedited Motion for a Preapproved Finding of Substantial Contribution (Motion) for the costs of its outside expert and consultation services. The Commission has not previously made a preapproved finding of substantial contribution, and we have insufficient information to establish a budget for Greenlining in this proceeding.

**Notice of Intent to Claim Compensation**

**Timeliness**

Section 1804(a)(1) provides that a Notice of Intent (NOI) must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. No

PHC has been held in this case, and no deadline has been established for filing NOIs. Greenlining timely filed its NOI on March 3, 2004.<sup>1</sup>

### **Eligibility**

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a “customer” and that participation without compensation would pose a significant financial hardship.

### **Customer Status**

Section 1802(b) defines the term “customer” as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate

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<sup>1</sup> Greenlining served its NOI before the official service list had been established.

the percentage of its membership comprised of residential ratepayers.

(See D.98-04-059, *mimeo.*, at pp. 83 and 88.)

Greenlining seeks to participate as a formally organized group authorized to represent the interests of residential customers, the third category of customer. Greenlining is an Internal Revenue Code § 501(c)(3) corporation authorized by its by-laws to represent, among others, low-income communities and residential ratepayers before regulatory agencies and courts. Greenlining provided its by-laws in Application (A.) 98-12-005. Greenlining estimates that its constituency is 75% residential and 25% small business customers. The interests that Greenlining represents, specifically low-income, minority and limited-English speaking communities, are frequently underrepresented in Commission proceedings. Greenlining is a customer as that term is defined in §1802(b).

### **Significant Financial Hardship**

Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

Greenlining submitted its demonstration of financial hardship in A.02-11-017. By April 9, 2003 Administrative Law Judge Ruling, Greenlining was deemed to have met its statutory showing of significant financial hardship. In that ruling, Greenlining was deemed to have met the criteria for a finding of significant financial hardship by a rebuttable presumption in accordance with § 1804(b)(1) and based on the finding in D.00-04-003. Because that finding was

made more than one year prior to this proceeding commencing, it does not establish a rebuttable presumption. However, we note that D.03-03-026 also found that Greenlining met the criteria for a finding of significant financial hardship. This proceeding commenced within one year of that finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Further, to be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of Greenlining's individual members be small in comparison to the costs of effective participation. This investigation indirectly affects utility ratepayers' economic interests. Here the Commission is considering the appropriate regulatory framework that should govern the provision of Voice over Internet Protocol telephony (VoIP). Although the possible regulation of VoIP has economic implications, those effects for ratepayers of the type Greenlining represents appear small in comparison to the costs of participation. Accordingly, Greenlining meets the significant financial hardship test, subject, of course, to our auditing responsibilities pursuant to § 1804(d).

#### **Nature and Extent of Planned Participation; Estimate of Compensation**

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

#### **Planned Participation**

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of

certain matters, as contemplated by § 1804(b)(2). These matters include whether the intervenor proposes similar positions to those of other parties and whether there are “areas of potential duplication in showings.” *Id.* The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner’s scoping memo.

Greenlining expects to be an active party in this proceeding but does not have a full and complete plan regarding the nature and extent of its participation. However, Greenlining will evaluate the potential regulation of VoIP with an emphasis on its impact on underserved communities. Parties have yet to file comments; thus, it is not possible to determine at this time whether other parties will have similar positions or may duplicate efforts.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. Greenlining may represent customer interests that will be underrepresented if Greenlining is unable to participate effectively.

### **Estimate of Compensation**

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request. Greenlining estimates that the costs of its staff attorneys, experts and all other direct expenses will be approximately \$208,000. Greenlining includes an itemized estimate of its expenses as follows:

<b>Attorney/Category</b>	<b>Estimated Hours</b>	<b>Hourly Rate</b>	<b>Estimated Cost</b>
Robert Gnaizda	100	475	\$47,500
Itzel Berrio	100	310	\$31,000
John C. Gamboa	50	375	\$18,750
Outside experts and consultants			\$102,500

Other Direct Expenses			\$8,250
<b>TOTAL</b>			<b>\$208,000.00208,000</b>

Greenlining will address the reasonableness of the requested hourly rates in its Request for Compensation. Greenlining's itemization at this time fulfills the requirements of § 1804(a)(2)(A)(ii). This ruling does not ensure compensation.

Greenlining is cautioned that it should carefully document the number of hours and hourly fees for counsel and carefully allocate such expenses to specific issues pursued in this proceeding. Greenlining should also review Commission orders and, in preparing its compensation request, take into account the Commission's practices for reducing hourly rates and hours claimed, e.g., for travel time and time spent on compensation-related matters.

Assuming compliance with the foregoing and a substantial contribution, Greenlining should be eligible for an award under the intervenor compensation program.

### **Motion for Preapproved Finding of Substantial Contribution**

Greenlining filed its Motion on March 3, 2004. Greenlining served this Motion before the Commission's Process Office had established and posted an official service list in this proceeding and did not serve the Motion on the Assigned Administrative Law Judge.<sup>2</sup> On March 19, 2004, Greenlining filed an Expedited Motion for a Ruling on the Request of the Greenlining Institute for a Preapproved Finding of Substantial Contribution, stating its consultant could not participate further without a determination of substantial contribution. On or

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<sup>2</sup> It appears Greenlining obtained a partial service list from the Process Office.

around March 19, 2004, Pacific Bell Telephone Company d/b/a SBC California requested, and received from Greenlining, an extension of time until March 24, 2004 to file a response to the Motion, because SBC California had not been served with the Motion. Ultimately, SBC California did not file a response.

Greenlining requests preapproval of \$102,500 in costs for outside expert and consultation services. Greenlining also seeks the opportunity to apply monthly for interim awards of compensation. Greenlining states that it will not be able to undertake the significant financial risk of presenting the perspectives of urban, low-income ratepayers in this proceeding without the assurance that it can recover its actual costs. Greenlining relies on the July 23, 2003 Assigned Commission Ruling (ACR) in Investigation (I.) 02-04-026 as support for its request for preapproval.

We decline to preapprove a finding of substantial contribution for Greenlining in this proceeding just as the ACR in I.02-04-026 similarly declined to make such a finding for The Utility Reform Network (TURN). (ACR, p. 8.) We note here, as was done in the ACR with respect to TURN, that the Commission frequently finds that Greenlining has made a substantial contribution in our proceedings. Assuming Greenlining's efforts substantially contribute to the development of a record of how exempting VoIP from regulatory requirements will affect underserved communities, we anticipate no different result in this proceeding.<sup>3</sup>

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<sup>3</sup> Greenlining and Latino Issues Forum jointly have participated in Commission proceedings and sought compensation for their participation. Although recent decisions finding substantial contribution and awarding compensation have considered the contributions of both entities, we have no reason to believe that the Commission will view Greenlining's sole participation any less favorably.

In I.02-04-026, the ACR established a budget for TURN's outside consultant and additional internal expenses of \$800,000, although TURN requested preapproval of \$1,195,500 in outside consultant expenses and estimated an additional \$215,000 in internal expenses. In this proceeding, Greenlining requests preapproval for two experts, Michael Phillips and Alex Gault, to prepare advice and testimony regarding the impact on underserved communities of exempting VoIP from regulatory requirements. The Commission has previously awarded compensation to Michael Phillips and his last approved hourly rate, adopted in D.03-04-050, was \$290 for 2001. The Commission has no prior award for Alex Gault. We assume Gault has expertise in VoIP and would assist Greenlining on that basis. Without knowledge of Gault's background, we cannot estimate what hourly rate the Commission will determine is reasonable for him. Although we theoretically could set a budget for Phillips' costs of \$35,000, we have insufficient information to establish a budget for Gault and cannot, as Greenlining itself would admit, use its rough estimate of internal expenses to set a budget for this proceeding. Thus, we decline to set a budget for Greenlining based on the information provided at this time.

The ACR in I.02-04-026 permitted TURN to file interim requests for compensation when specific deliverables, such as testimony and briefs, had been achieved. Greenlining's request for monthly requests for compensation, linked to the invoices received from its consultants, departs from that process. In addition, this investigation will move quickly, with a draft decision anticipated within 90 days after the filing of reply comments and a final decision 30 days later. Because of the not insubstantial administrative burden entailed in adopting this irregular procedure, the difficulty in performing audits after



appropriations have been made, and the silence of the statute on the issue, we decline to adopt the proposed procedure for monthly requests for compensation and thus deny Greenlining's request.

**IT IS RULED** that:

1. The Greenlining Institute's (Greenlining) Expedited Motion for a Preapproved Finding of Substantial Contribution is denied.
2. Greenlining has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding. Greenlining is a customer as that term is defined in § 1802(b) and is authorized by its by-laws to represent the interests of residential ratepayers.
3. Greenlining has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.
4. A finding of eligibility in no way assures compensation.

Dated April 1, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown  
Assigned Commissioner

/s/ SUSAN P. KENNEDY

Susan P. Kennedy  
Assigned Commissioner

## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Joint Commissioners' Ruling Granting the Greenlining Institute's Notice of Intent to Claim Compensation and Denying Its Motion for a Preapproved Finding of Substantial Contribution on all parties of record in this proceeding or their attorneys of record.

Dated April 1, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.